

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

DOROTHY GARCIA,

Plaintiff,

v.

CIVIL ACTION NO. 2:12-cv-15373

COLOPLAST CORP.,

Defendant.

MEMORANDUM OPINION AND ORDER

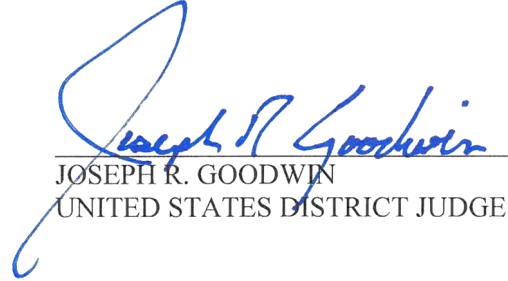
Pending is Defendant Coloplast Corp.’s Motion for Partial Summary Judgment, filed May 13, 2019. [ECF No. 63]. In the motion, Coloplast Corp. (“Coloplast”) moves for partial summary judgment as to plaintiff’s claims of strict liability – design defect (Count II); strict liability – manufacturing defect (Count III); strict liability – failure to warn (Count IV); strict liability – defective product (Count V); breach of express warranty (Count VI); breach of implied warranty (Count VII); fraudulent concealment (Count VIII); constructive fraud (Count IX); negligent misrepresentation (Count XI); and violation of consumer protection laws (Count XIII). Plaintiff responds by stating that she will not pursue Count III and does not oppose the granting of summary judgment in favor of Coloplast as to Counts VI and XIII. [ECF No. 71]. Coloplast has replied [ECF No. 73].

Plaintiffs might well have moved to dismiss Counts III, VI and XIII if she does not intend to pursue them. In any event, summary judgment is appropriate on all claims where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Because plaintiff has

acknowledged she does not intend to pursue the claims cited above, the court **ORDERS** that Coloplast's Motion for Partial Summary Judgment [ECF No. 63] is **GRANTED as to Counts III, VI and XIII and is otherwise DENIED**

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record.

ENTER: September 10, 2019



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE